

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 201 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

ORIENTAL FIRE & GENERAL INS. CO. LTD.

Versus

SOMABHAI RAIJIBHAI PARMAR

Appearance:

Mr.A.S.Vakil for MR SB VAKIL for Petitioner
MR KC SHAH for Respondent No. 1 and 2 (absent).
MR.M.J.Parikh for Mr.P.B.Majmudar for Respondents
No.3 and 4.

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 06/02/98

ORAL JUDGEMENT

1. This appeal is filed by the appellant-Insurance
Company under section 30 of the Workmen's Compensation

Act, 1923 against the award dated 20.4.1978 passed by the learned Civil Judge (S.D.) and ex-Officio Commissioner for Workmen's Compensation, Vadodara, in Workmen's Compensation Application No.15/77.

2. The respondents Nos. 1 and 2 are the parents of deceased-workman and the respondents Nos.3 was his employer.

3. The learned Commissioner, after recording evidence, found that the deceased, Jayantibhai Somabhai Parmar, was employed by respondent No.3 as Cleaner on the motor truck No.GTB 5517 and that he died on 31.12.1976 due to the accident, during the course and time of the employment on the said truck. He also recorded the finding that the monthly salary of the deceased was Rs.250/- plus Rs.7/- as travelling allowance per day. He held that the applicants, who were the parents of the deceased Jayantibhai Somabhai Parmar, were entitled to compensation of Rs.18,000/-. He further held that the appellant-Insurance Company, with whom the truck in question was insured, was liable to satisfy the judgment. He also held that the employer and the Insurance Company, being liable to pay compensation on account of the death of the workman, ought to have deposited the amount within one month, on the basis of the accepted wages, but as they had failed to do so, they were liable to pay penalty at the rate of 50 per cent of the compensation-amount, which came to Rs.9,000/-. The learned Commissioner, therefore, by his order dated 20.4.1978, directed the respondent No.3 and the appellant to deposit Rs.18,000/- as compensation and Rs.9,000/- as penalty, with running interest at 6 per cent per annum on Rs.18,000/- from 1.2.1977 till payment.

4. At the hearing of the appeal, it became clear that there was no scope for challenging the finding that the deceased was a workman employed as a Cleaner on the truck belonging to respondent No.3 and that he died in the course of his employment. Similarly, the finding of the learned Commissioner that the monthly salary of the deceased was Rs.250/- plus Rs.7/- as travelling allowance per day is supported by evidence and cannot be assailed. The amount of Rs.18,000/-, which is awarded as compensation was worked out in accordance with the Schedule and there is no dispute about that.

5. However, Mr.A.S.Vakil learned Advocate appearing

for the appellant-Insurance Company, contended that the learned Commissioner committed an error of law in holding that the Insurance Company was liable to pay the amount of penalty. He cited the decision of the Hon'ble Supreme Court in the case of VED PRAKASH GARG versus PREMI DEVI AND OTHERS, reported in (1997) 8 SCC, page 1. In para 19 of the said decision, it is held as follows:-

"19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

6. It is thus clear, in view of the categorical ruling of the Supreme Court, that the insurance company is not liable to pay the amount of penalty which is imposed on the employer.

7. Shri M.J.Parikh, learned Advocate for respondents Nos. 3 and 4, contended that, in the written statement, the Insurance Company has stated that the deceased workman was getting Rs.5/- per day, which shows that the insurance company was aware of the claim and they were liable to pay the penalty. He also contended that the insurance company had not raised this contention before the Commissioner. There is no substance in this argument. The decision of the Supreme Court holds, in categorical terms, that the insurance company is not liable to pay penalty, and the judgment of the Commissioner clearly shows that the insurance company had disputed their liability to pay penalty.

8. As a result of the above discussion, the appeal

is partly allowed, and it is held that the appellant-Insurance Company is not liable to pay Rs.9,000/- as penalty, which has been imposed upon the respondent No.3, who was the employer. No order as to costs.
